

## **REMARKS**

In the Office Action dated August 19, 2003, claims 18-33 were pending. Claims 18, 19, 22-24 and 26-28 stand rejected. Claims 30-33 were allowed, and claims 20, 21, 25 and 29 were indicated to include allowable subject matter if rewritten in independent form. In this response, claims 18-21 have been cancelled without prejudice, claims 22-23 have been amended, and claims 34-42 have been added. Reconsideration of the present application as amended and including claims 22-42 is respectfully requested.

Claim 23 was objected to for being dependent from itself. Claim 23 has been amended to refer back to claim 22. Withdrawal of the objection to claim 23 is respectfully requested.

Claim 18 was rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,862,891 to Smith. Claims 18-21 have been cancelled in this response.

Claims 22 and 24 were rejected as being anticipated by U.S. Patent No. 3,486,505 to Morrison. The office action asserts that Morrison discloses “a method for fixing vertebrae, where skin and tissue (“soft tissues”) are sequentially dilated with an incision and movement of the lateral guides (16) and arms (11)....” Amended claim 22 recites “sequentially dilating skin and tissue with a number of dilators, of which an outer dilator provides an access portal to a disc space between the adjacent vertebrae....” It is respectfully submitted that Morrison fails to disclose sequential dilation, and clearly does not disclose sequential dilation with a number of dilators. Accordingly, claim 22, and claim 24 depending therefrom, distinguish Morrison and withdrawal of this basis of the rejection is respectfully requested.

Claim 19 was rejected as being unpatentable over the combination of Smith in view of U.S. Patent No. 4,573,448 to Kambin. Claim 19 has been cancelled in this response.

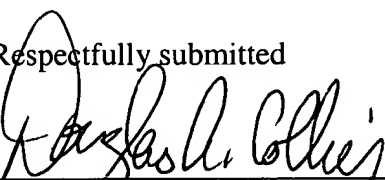
Claims 22, 23, and 26-28 were rejected as being unpatentable over U.S. Patent No. 4,545,374 to Jacobson in view of U.S. Patent No. 3,848,601 to Ma et al. Jacobson teaches placing a speculum in an incision to spread the tissue apart and then inserting a cannula through the speculum. *See* col. 5, line 60 to col. 6, line 5. Accordingly, the skin and tissue must be over-retracted to accommodate placement of the cannula within the speculum. In contrast, claim 22 recites “sequentially dilating skin and tissue with a number of dilators, of which an outer dilator provides an access portal to a disc space between the adjacent vertebrae...” The method of claim 22 is less invasive, and is not taught or suggested by Jacobson. In addition, Ma fails to provide the teaching or suggestion missing in Jacobson to render claim 22 unpatentable. Accordingly, claim 22, along with claims 23 and 26-28 depending therefrom, are allowable, and withdrawal of this basis of the rejection is respectfully requested.

Several new claims 34-42 have been added in this response to re-present dependent claims indicated as allowable in the Office Action in independent form. Specifically, new claim 34 re-presents allowable dependent claim 20 in independent form. New claims 35 and 36 correspond at least generally in subject matter to canceled claims 19 and 21, respectively.

New claim 37 re-presents allowable dependent claim 25 in independent form. Claims 38-42 depend from claim 37 and correspond at least generally in subject matter to canceled claims 23 and 26-29.

In view of the above amendments and remarks, claims 22-42 are allowable and in condition for allowance. A Notice of Allowance is respectfully solicited. Should it facilitate allowance of the application, the Examiner is invited to telephone the undersigned.

Respectfully submitted

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